

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE LAWRENCE STERLING,

Defendant-Appellant.

UNPUBLISHED

January 25, 2005

No. 251530

Kent Circuit Court

LC No. 02-008241-FH

Before: Smolenski, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

A jury convicted defendant Maurice Sterling of one count of resisting or obstructing a police officer.¹ The trial court sentenced defendant to twelve months in jail, to be served consecutively to any sentence served by defendant for violating his parole from a sentence for a previous offense. Defendant appeals his conviction and sentence, and we affirm.

I

Defendant argues that the trial court erroneously denied his motion for directed verdict, and that there was insufficient evidence to support his conviction. With respect to motions for directed verdict and challenges to the sufficiency of the evidence, we review the evidence presented at trial in the light most favorable to the prosecution to determine whether a rational trier of fact could have found beyond a reasonable doubt that the defendant was guilty of the crime. *People v Riley (After Remand)*, 468 Mich 135, 139-140; 659 NW2d 611 (2003) (directed verdict); *People v Fletcher*, 260 Mich App 531, 559; 679 NW2d 127 (2004) (sufficiency of the evidence). MCL 750.479(1)(b) proscribes the knowing and willing obstruction or resistance of a police officer in the course of his or her official duties. *People v Green*, 260 Mich App 392, 400; 677 NW2d 363 (2004). The statute is intended to protect police officers in the performance of “ordinary police functions, including those that do not directly involve placing a person under arrest.” *Id.*, quoting *People v Wess*, 235 Mich App 241, 243; 597 NW2d 215 (1999) (internal quotations omitted). Here, the evidence presented showed that police officers responded to an anonymous tip that there were people selling drugs on a certain street corner that was well

¹ MCL 750.479(1)(b). The jury acquitted defendant of a second count of the same offense.

known for drug activity. Officers saw defendant and two other men waving and attempting to flag down passing cars, and testimony revealed that this was common practice among drug dealers. Accordingly, officers had reasonable suspicion “that criminal activity may be afoot” to conduct a *Terry* stop. *Terry v Ohio*, 392 US 1, 30; 88 S Ct 8868; 20 L Ed 2d 889 (1968). One of the officers conducted a pat-down search of defendant. It is reasonable to perform a pat-down search during a *Terry* stop where, as here, police officers have a reasonable suspicion that the person to be searched is engaged in the sale of illegal drugs and thus that the person may be in possession of a weapon. *People v Custer*, 465 Mich 319, 328-330; 630 NW2d 870 (2001). Here, while the officers conducted the pat-down search, defendant kicked at one of the officers and struck another, and then ran away from them. Defendant was soon caught and placed under arrest, and attempted to kick one of the police officers as the officer placed defendant in the back seat of his patrol car. Viewing this evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found defendant guilty beyond a reasonable doubt of obstructing or resisting a police officer. Accordingly, we hold that the trial court properly denied defendant’s motion for directed verdict, and that defendant’s conviction was supported by sufficient evidence.

II

Also, defendant claims that the trial court committed an error requiring reversal with respect to its instruction to the jury regarding anonymous tips. The trial court instructed the jury that an anonymous tip by itself cannot create reasonable suspicion necessary for a *Terry* stop, but if the officers see for themselves that part of the information in an anonymous tip is true, then the officers may reasonably rely on it. We conclude that this is an accurate statement of the law. See *People v Faucett*, 442 Mich 153, 164-173; 499 NW2d 764 (1993), citing *Alabama v White*, 496 US 325, 327; 110 S Ct 2412; 110 L Ed 2d 310 (1990). Accordingly, we hold that the trial court did not commit an instructional error requiring reversal.²

III

Further, defendant says that the prosecutor engaged in prosecutorial misconduct that denied defendant a fair trial, and reversal is required as a result. However, defendant failed to object to these remarks at trial. Review of this issue is therefore precluded, unless a curative instruction would not have been sufficient to eliminate any prejudice. *People v Noble*, 238 Mich App 647, 661; 608 NW2d 123 (1999). Moreover, defendant objects to remarks made to the effect that defendant had lied during his testimony. However, “[a] prosecutor may argue from the facts that a witness, including the defendant, is not worthy of belief.” *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996). Accordingly, we hold that defendant was not denied a fair trial by the prosecutor’s remarks.

² Moreover, were we to hold otherwise, we would nevertheless hold that any error is harmless. The evidence shows that the anonymous tip was not the only basis for the *Terry* stop. The evidence further shows that the fact that defendant and the two men accompanying him were standing in an area known for a large amount of illegal drug sales, combined with the fact that the men signaled several passing cars in a manner consistent with illegal drug sales is what led the officers to conduct a *Terry* stop.

IV

Finally, defendant maintains that the trial court erred when it denied his pretrial motion to quash the district court order that bound defendant over for trial. Because we have held that defendant was fairly convicted at trial, defendant may not appeal, nor may we review, the trial court's decision with respect to defendant's motion to quash. *People v Wilson*, 469 Mich 1011; 677 NW2d 29 (2004), citing *People v Hall*, 435 Mich 599, 601-603; 460 NW2d 520 (1990) and *People v Yost*, 468 Mich 122, 124 n 2; 659 NW2d 604 (2003).

Affirmed.

/s/ Michael R. Smolenski

/s/ Henry William Saad

/s/ Richard A. Bandstra